

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAULA ANDREWS,

Defendant.

Case No. 3:93-cr-00075-HDM  
Case No. 3:17-cv-00158-HDM

ORDER

Defendant Paula Andrews ("Andrews") has filed a motion for leave to amend her 28 U.S.C. § 2255 motion (ECF No. 209). The government has responded (ECF No. 211), and Andrews has replied (ECF No. 212).

On August 22, 1993, Andrews opened fire on a car that contained several people, killing Steven Williams and injuring Matt John and James Thomas. During the same altercation, Andrews' brother, co-defendant Ivan Andrews ("Ivan Andrews"), shot and killed Stephen Lowery. Andrews and her brother were arrested and charged with two counts of first degree murder and aiding and abetting, two counts of attempted murder and aiding and abetting, and four counts of use of a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c).

At trial, a jury found Andrews guilty of one count of second degree murder for the murder of Williams, one count of aiding and abetting in second degree murder for the murder of Lowery, two counts of attempted voluntary manslaughter, and all four firearms charges. See *United States v. Andrews*, 75 F.3d 552, 554-55 (9th Cir. 1996). Andrews' brother, Ivan, was found guilty of one count

1 of second degree murder for the murder of Lowery, one count of  
2 aiding and abetting in second degree murder for the murder of  
3 Williams, two counts of aiding and abetting attempted voluntary  
4 manslaughter, and all four § 924(c) charges. On appeal, the Ninth  
5 Circuit affirmed Paula Andrews' convictions. However, after  
6 concluding that there was "no evidence that Ivan knowingly and  
7 intentionally aided, counselled, commanded, induced, or procured  
8 Paula to shoot the people in the car," *id.* at 555, the Court of  
9 Appeals reversed Ivan's three aiding and abetting convictions and  
10 the § 924(c) convictions that relied thereon.

11 On March 10, 2017, pursuant to leave granted by the Court of  
12 Appeals, Andrews filed a second or successive motion to vacate  
13 pursuant to 28 U.S.C. § 2255.<sup>1</sup> In her motion, Andrews asserts that  
14 her § 924(c) convictions are no longer valid after *Johnson v.*  
15 *United States*, 576 U.S. 591 (2015). *Johnson* held that the residual  
16 clause of the definition of "violent felony" contained in 18 U.S.C.  
17 § 924(e)(2)(B)(ii) is unconstitutionally vague. In July 2018, the  
18 court stayed proceedings on the motion pending the Ninth Circuit's  
19 decision in *United States v. Begay*, 14-10080. Proceedings on  
20 Andrews' motion remain stayed pending a final decision in *Begay*.

21 In June 2019, the Supreme Court ruled in *United States v.*  
22 *Davis*, 139 S. Ct. 2319 (2019) that the residual clause contained  
23 in the definition of a "crime of violence" under § 924(c) -  
24 Andrews' statute of conviction -- is also unconstitutionally

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27 <sup>1</sup> Andrews filed an abridged motion to vacate in June 2016, pending  
28 authorization from the Court of Appeals to file the second or  
successive motion. The Ninth Circuit granted such authorization in  
February 2017.

1 vague. The parties have yet to address the impact of *Davis* on  
2 Andrews' motion.

3 Andrews now requests leave to amend her pending motion to  
4 assert that for each of her predicate crimes of violence she was  
5 convicted under an aiding and abetting theory, that aiding and  
6 abetting offenses do not categorically qualify as crimes of  
7 violence under 18 U.S.C. § 924(c)'s elements clause, and that, on  
8 this additional ground, her four § 924(c) convictions are invalid.  
9 Andrews also seeks to incorporate arguments based on subsequent  
10 case law, namely *Davis*, 139 S. Ct. 2319 and *United States v.*  
11 *Dominguez*, 954 F.3d 1251, 1261-62 (9th Cir. 2020).

12 The government opposes, arguing that Andrews has unduly  
13 delayed in seeking to amend and that amendment would be futile.

14 Under Federal Rule of Civil Procedure 15(a)(2), "the court  
15 should freely give leave [to amend] when justice so requires."  
16 However, leave to amend "is not to be granted automatically." *In*  
17 *re W. States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716,  
18 738 (9th Cir. 2013). The court "considers the following five  
19 factors to assess whether to grant leave to amend: (1) bad faith,  
20 (2) undue delay, (3) prejudice to the opposing party, (4) futility  
21 of amendment; and (5) whether plaintiff has previously amended his  
22 complaint." *Id.* (internal punctuation omitted).

23 Addressing the question of futility first, it is beyond  
24 reasonable dispute that Andrews was the principal of three of the  
25 four predicate crimes on which her § 924(c) convictions were based.  
26 Not only did the facts clearly show that it was Andrews who fired  
27 the weapon that killed Williams and injured John and Thomas, the  
28 Ninth Circuit described her as the principal of these crimes and

1 specifically reversed Ivan Andrews' convictions for these same  
2 crimes because there was no evidence he "'participate[d] in  
3 [Paula's shootings] as something that he wishe[d] to bring about,'  
4 or sought 'by his action[s] to make ... succeed.'" *Andrews*, 75  
5 F.3d at 556. Amending the petition to assert that Andrews was found  
6 guilty of these predicate crimes under an aiding and abetting  
7 theory would be futile. The futility of this proposed amendment  
8 outweighs all other factors, even assuming they would otherwise  
9 weigh in favor of amendment. To the extent that Andrews seeks to  
10 amend the petition to allege that she was convicted under an aiding  
11 and abetting theory for the murder of Williams and the attempted  
12 murder of Thomas and John, the motion will be denied.

13 Andrews' request to amend as to the Lowery murder conviction,  
14 however, would not necessarily be futile. The evidence and law of  
15 the case demonstrates that Andrews' conviction as to this crime  
16 was under an aiding and abetting theory. And, as the government  
17 concedes, it is an open question in this circuit whether aiding  
18 and abetting qualifies as a crime of violence. The remaining  
19 factors do not overall weigh against allowing amendment. While  
20 Andrews did wait nearly four years from filing her full § 2255  
21 motion before requesting leave to amend, these proceedings have  
22 been stayed for more than half of that time. Thus, if the delay in  
23 seeking leave to amend weighs against amendment, it does so only  
24 slightly. Further, the remaining factors weigh in favor of  
25 amendment: There is no indication that the amendment is sought in  
26 bad faith or that the government will suffer any prejudice from an  
27 amendment, and there have been no previous amendments.

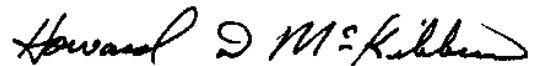
1 Andrews will therefore be permitted to amend her motion to  
2 assert that her conviction for Lowery's murder was under an aiding  
3 and abetting theory. She may also amend her motion to include any  
4 additional legal arguments based on opinions issued after the  
5 filing of her motion.

6 In accordance with the foregoing, IT IS THEREFORE ORDERED  
7 that Andrews' motion for leave to amend (ECF No. 209) is GRANTED  
8 IN PART and DENIED IN PART as set forth above.

9 IT IS FURTHER ORDERED that Andrews shall file an amended  
10 motion to vacate in accordance with this order no later than April  
11 8, 2021. The government shall file a response to the amended motion  
12 on or before May 24, 2021, and the defendant shall file any reply  
13 on or before June 23, 2021.

14 IT IS SO ORDERED.

15 DATED: This 22nd day of February, 2021.

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18 UNITED STATES DISTRICT JUDGE  
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